

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 531 of 1978

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JANAKDULARI WIDOW OF BHAGWATIPRASAD MAHAVIRPRASAD

Versus

BABULAL SURAJPRASAD SHARMA

Appearance:

MR DF AMIN for Appellant
MR SHIRISH JOSHI for Respondent No. 1
MR SH SANJANWALA for Respondent No. 2
MR PJ VYAS for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 21/01/97

ORAL JUDGEMENT

1. The present appeal is one under section 100, CPC, wherein the appellant is the original first defendant, and the respondent nos.1 to 3 are the plaintiff no.1, plaintiff no.2 and the second defendant respectively. It may be noted here that the 4th respondent in appeal (the original third defendant) has been deleted by order dated 6th August 1993, passed in Civil Application No.2632/79

in the present appeal.

2. The scope of section 100 CPC, and the powers of the High Court while exercising jurisdiction as a second appellate court are by now well demarcated and require no detailed discussion. The Supreme Court has, in the case of

(i) Ramaswamy Kalingaryar Vs. Mathayan Padayachi
(AIR 1992 Supp (1) SCC page 712),

(ii) Kashibai w/o of Lachiram (2) 1995(7) JT (SC) 48
and

(iii) Parsini (dead) through Legal Representatives Vs.
Atma Ram (AIR 1996 SC 1558),

clearly reiterated the principle that the High Court cannot, while functioning as a second appellate court under section 100 CPC, upset the findings of fact recorded by the lower appellate court by reassessing the evidence, or reassess the qualitative value of such evidence on record, and thus cannot reverse such findings of fact. In fact, the High Court cannot interfere with such findings of fact even by examining or reappreciating the evidence from the aspect of "sufficiency of proof".

3. The pertinent facts, in brief, leading to the present appeal are as under:

3.1 The plaintiffs had filed a suit in respect of the suit property being Room no.28 on the first floor of a property bearing Nondh No.165 of Ward No.7, situated opposite the Railway Station at Surat. The case of the plaintiffs was that they had taken the suit premises on lease from the third defendant, who had left Surat, and that the plaintiff no.1 had taken possession of the same by obtaining from the third defendant a Kabja Receipt dated 12th August 1971. The plaintiffs contended that the first defendant is occupying another property viz. room no.29, as a tenant of the owner, and the latter property is adjacent to room no.28 which is the suit property. It was further contended by the plaintiff no.1 that after they took possession of the suit premises from the third defendant on 12th August 1971, it was used as a godown, and the same was locked by the first plaintiff. However, defendant nos.1 and 2 broke open the lock of the suit premises on or about 6th July 1972 and occupied the same by taking illegal possession thereof. It was, therefore, contended that defendant nos.1 and 2 are

trespassers in the suit premises in respect of which the plaintiffs have a legal right of possession, and hence the suit for eviction of the said trespassers on the basis of the possessory title. The plaintiffs had also asked for an incidental relief restraining defendant nos.1 and 2 from interfering with the possession of the plaintiffs in respect of the suit properties.

3.2 In respect of these averments made in the plaint, the third defendant (original tenant) supported the averments in general and particularly supported the plaintiffs on the substantial averments to the effect that he had delivered possession of the suit premises to the first plaintiff on 12th August 1971 under a Kabja Receipt, etc. He, however, pleaded further that he has been wrongfully joined as a party to the suit.

3.3 As against this, a contention taken by defendant nos.1 and 2 was to the effect that the suit premises had been taken by them on lease for the joint family by the husband of the first defendant, and the rent of the suit premises was also paid by the said husband. In the alternative the first defendant averred that even if it is held that the first plaintiff is a tenant of the suit premises, the first defendant and her husband were sub-tenants of the third defendant since prior to 21st May 1969, and are therefore deemed to be the legal sub-tenants of the suit premises, and that therefore their possession in respect of the suit premises is legal. According to the first defendant, the Kabja Receipt issued by the third defendant in favour of first plaintiff is a fabricated document and no such possession was delivered to the first plaintiff as contended by the third defendant. Defendant nos.1 and 2 had raised further contentions by way of denials to other averments made in the plaint, with which we are not directly concerned.

3.4 On the basis of the aforesaid pleadings the trial court raised issues at Exh.19, and found on facts that the third defendant was the original tenant (qua the landlord of the disputed property) and that he had handed over possession of the suit premises to the first plaintiff by the Kabja Receipt dated 12th August 1971, (and that thereafter, the first plaintiff had also purchased the disputed property from the original landlord), and for this reason also he had a right to file and maintain the suit. The trial court had also recorded findings of fact to the effect that defendant nos.1 and 2 had taken illegal possession of the suit premises and were therefore trespassers. On the basis of

these factual findings the trial court found in favour of plaintiff nos.1 and 2 and held that they were entitled to recover possession from defendant nos.1 and 2. The consequential relief as to prohibitory injunction was also granted by the trial court. On the basis of the said factual findings the trial court decreed the plaintiffs' suit.

3.5 Being aggrieved by the said judgement and decree passed by the trial court, the first defendant preferred Regular Civil Appeal No.57/77 to the District Court under section 96, CPC. After a detailed discussion on the averments and pleadings of the parties, and after reconsideration and reappraisal of the entire evidence on record, the lower appellate court confirmed the findings of fact recorded by the trial court and dismissed the appeal filed by the first defendant. In substance, the lower appellate court found that the original defendant no.3 was in fact the tenant (qua the original landlord) in respect of the suit premises, that the third defendant had legally handed over possession of the suit premises to the first plaintiff, and that the third defendant had failed to prove that she was a legal sub-tenant of the suit premises. In view of these factual findings recorded by the District Court, the appeal was dismissed.

4. It is under such circumstances that the present appeal has been preferred by the first defendant.

5. As already discussed by me hereinabove, the scope and ambit of the present appeal under section 100, CPC, is extremely narrow. It is not open to me to reappraise the evidence on record, and to arrive at findings contrary to the findings of fact recorded by the two courts below, particularly when such findings are neither perverse nor absurd, and when the judgement and decrees impugned herein cannot be said to be based on "no evidence".

6. In spite of the earnest efforts of the learned counsel for the appellant, I am unable to find as acceptable any other view as regards the appreciation of the evidence and the conclusions to be drawn therefrom. Learned counsel for the appellant is unable, on the particular facts of the case, to make out any substantial question of law on the basis of which the judgements and decrees of the two courts below would require interference by this court.

7. In the premises aforesaid, there is no substance

in the present appeal and the same is accordingly
dismissed with no order as to costs.